

**MINUTES  
EAGAR TOWN COUNCIL  
REGULAR MEETING  
22 W. 2<sup>nd</sup> St., Eagar, AZ  
September 20, 2011 – 7:00 P.M.**

Mayor Kim Holaway called the meeting to order and welcomed those present. Mayor Kim Holaway led the Pledge of Allegiance and Councilor Gary Finch offered the invocation. Mayor Holaway said to let the record show that all council members were present.

COUNCIL PRESENT:      Kim Holaway, Mayor  
                                 James Nelson, Jr., Vice Mayor  
                                 Steve Erhart  
                                 Gary Finch  
                                 Debbie Rogers  
                                 Byron Smith  
                                 Tim Rasmussen

STAFF PRESENT:        Bill Greenwood, Town Manager  
                                 Doug Brown, Town Attorney  
                                 Bruce Ray, Community Development Administrator  
                                 Steve Christensen, Interim Public Works Director  
                                 Mike Hogan, Chief of Police  
                                 Katie Wood, Finance Administrator  
                                 Eva Wilson, Town Clerk  
                                 Marion Wiltbank, Assistant Town Clerk

**ITEM #5: SUMMARY OF CURRENT EVENTS**

**A. MAYOR**

Mayor Kim Holaway attended the grand opening of Donna's Candy Corner & Boutique. The new store is at 367 N. Main Street in Eagar. Donna's shop has candy, fudge and gifts.

The Arizona State Re-districting Committee did not schedule a second round of any meetings in Apache County and Mayor Holaway has called and tried to set up a meeting in southern Apache County.

**B. COUNCIL**

Councilor Gary Finch traveled to Otero County in New Mexico and witnessed Senator Steve Pearce cut down the first tree on the forest and the Sheriff who is the ultimate law officer in the county was there backing him up. Otero County has taken their forest back for the safety of their citizens.

Councilor Debbie Rogers reported on 8<sup>th</sup> Annual ATV Jamboree over the week of September 6<sup>th</sup> – September 10<sup>th</sup>. It took around 105 people to make it happen. With trails being burnt, the event had to negotiate with the Forest Service for new trails. Councilor Rogers was concerned with what is happening with the Forest Service for the use of public lands. Councilor Rogers had to get her Arizona Department of Transportation (ADOT) permit changed to the new trails that went across a state road and there were safety issues on some of the trails getting into Hannagan Meadow Lodge. The Forest Service person told Councilor Rogers and Hank Rogers that they had to talk to the Southwest Center for Biological Diversity and get permission that they would okay the permit on Forest Service roads that are technically closed.

Councilor Tim Rasmussen reported on last week's Pitch In and Clean Up Committee meeting. Working on an Eagle Scout Project for the Centennial Park sign. He has called the schools to have the children design the sign.

#### C. STAFF

Community Development Bruce Ray announced the groundbreaking for the LeSueur Drive Drainage Grant Project would be held on September 22, 2011 at 11:00 a.m. on LeSueur Drive. Vice-Mayor James Nelson, Jr. will be the primary speaker.

#### **ITEM #6: OPEN CALL TO THE PUBLIC**

Pursuant to public notice of the meeting, there was a call to the public.

Springerville-Eagar Chamber Director Becki Christensen reported the following:

- Festival of Lights to be held for two weeks from December 11 - 18, 2011 and will begin at 6:00 p.m. till 8:00 p.m. at the Becker Wildlife River Walk. The walk will go from the entrance off Highway 60 to the bridge across the Little Colorado River. Civic organizations, churches, and businesses will be given the opportunity to build representative lighted frames to place along the path. Hot Chocolate will be handed out free after the walk. The event will be free to the public with a suggested donation of \$3 per family at the end of the walk.
- Next monthly mixer will be held Thursday, September 22, 2011 at the Johnson-Udall Room at the Town of Springerville at noon. Jessie's Buns will host it and the cost is \$12 per person.
- Attended the Preparedness Fair on Saturday, September 17, 2011 and collected input from citizens for the shop local survey and will have the results for an October council meeting.

#### **ITEM #7: UNFINISHED BUSINESS**

A. DISCUSSION AND CONSIDERATION ALLOWING THE REFINANCING OF THE KENNEDY WELL PAYING OFF KERRY KENNEDY AND TO BE RELEASED OF OBLIGATIONS STIPULATED BY THE LEASE AGREEMENT

Town Manager Bill Greenwood said Water Infrastructure Finance Authority (WIFA) would allow the Town to finance the full amount of the Kennedy Well at about 1.95%. Mr. Kennedy is willing to wait until November/December and take a down payment this calendar year of \$70,000 with the balance paid off in January after the WIFA funding is approved. The Town would need to front \$70,000 and get reimbursed in January. The Town has the \$36,000 payment that is due in January and can pay the other \$34,000 if needed. This option will save the town over \$120,000 plus 20 years of royalty fees. The pay off will be \$42,000 for 10 years. The resolution arrived Monday and the attorney will review it. Mr. Greenwood will bring back a resolution that is required by WIFA for Council's consideration at the next meeting.

**ITEM #8: NEW BUSINESS**

A. DISCUSSION AND CONSIDERATION OF ITEMS THAT MAY BE NECESSARY TO CONSIDER ARISING FROM THE EAGAR AND SPINGERVILLE JOINT COUNCIL MEETING IN REGARDS TO TONY KYLE AND THE WINTER JAMBOREE EVENT

Mayor Kim Holaway said there was a Joint Council Meeting with the Towns of Eagar and Springerville before this meeting at 6:00 p.m. tonight. Mayor Holaway directed the Town Clerk to put this item on a future agenda with more specifics for the Council's consideration.

B. DISCUSSION AND CONSIDERATION REGARDING THE ARIZONA DEPARTMENT OF PUBLIC SAFETY INVESTIGATION AT THE TOWN PUBLIC WORKS YARD AND FURTHER TOWN ACTION

Mayor Kim Holaway read her memo that was dated September 14, 2011 to Eagar Council Members and the subject was the Department of Public Safety (DPS) Investigation. Mayor Holaway stated that this was not a personnel item.

Councilor James Nelson stated that the reason digging was done first and the subsurface scan done secondarily, was the person who made the accusations had a lot of credibility. Council should have gone with the subsurface scan first and found there was nothing there. A lot of people feel this is a personnel issue, that the Council is targeting certain employees or certain departments this is not the case. It is not a personnel issue. Council was given information, acted on this information and found nothing this matter is closed and done.

Mayor Holaway said the subsurface geophysical survey was done yesterday and no hazardous material was found at the site. The DPS has closed the case. She has called Randy Mattes with ADEQ and reported the survey to him and Arizona Department of Environmental Quality (ADEQ) does not need anything more from the Town. Mayor Holaway will email the survey results from Western Technologies, Inc. to ADEQ. ADEQ suggested keeping the survey for many years. Mayor Holaway is satisfied that this property does not contain any hazardous material and there is no potential for ground water contamination.

Councilor Debbie Rogers stated Council had had an initial meeting together and after that some councilmember's were not kept informed of the results. Other decisions were made without the Council as a whole. The seven people sitting here, as a whole, are very diverse and can make good/wise decisions together.

After nothing was found by digging, and when the subsurface geophysical survey was scheduled she called Councilor Byron Smith and Vice-Mayor James Nelson to let them know just for the record that she did not approve of more expenditure of money with no evidence except for one person's statement. From what the DPS investigator told her there are a few discrepancies with the Mayor's memo. The DPS investigation was opened because the Town called them. The Mayor and other Council member's stated they had to go to DPS because of criminal accusations off of hearsay of somebody they say is credible, however she does not find the person credible if he will not come forward with his name and information. The DPS investigator advised her the investigation was closed after the digging contrary to the Mayor's memo. The Mayor's and other Council member's decision to proceed with more testing on Monday reopened the investigation.

Councilor Debbie Rogers believes that this investigation was based on a personnel issue and has a problem with the lack of trust that Council has with staff and Council should not operate this way. There is also a lack of trust with the town attorney. In talking with the DPS investigator our town attorney was not kept informed.

For the record Councilor Debbie Rogers is not happy with how this was taken care of, Council needs to show more respect for the employees that work so hard for the benefit of this Town and hopes that things will be dealt with in a fairer manner in the future.

Mayor Kim Holaway thanked Councilor Rogers for her comments, but stated that she spoke with the DPS investigator today because Mr. Brown, (Town Attorney) said the DPS investigator had told Councilor Rogers the investigation was closed, and the DPS investigator stated he did not tell Councilor Rogers that.

Councilor Byron Smith agreed with what Councilor Rogers said. Someone said to him before the meeting started that people were here to divide this Council. He stated that members of Council have all ready done that – divided the Council. Taking action and not keeping the Council informed was not a wise decision.

Councilor Tim Rasmussen will not discuss what happened in executive session, however he thought that the Council had approved of the subsurface survey. He was the liaison to Public Works and was asked to be at the public works yard from the council standpoint and safety standpoint. Fifteen years ago the former property owners had a fuel spill and it was cleaned up, contaminated property was purchased and monitoring wells put in to be able to test, maintain and acknowledge that it was done. In an email by Town Manager Bill Greenwood there was a statement made that there was the possibility drums could have been buried there 15 years ago. What was decided was for the protection of the citizens of Eagar and never was it a personnel issue.

Councilor Steve Erhart stated in the meetings there was never any mention of anything except that if there is something in the ground we needed to get it out. There was never any accusation of individuals.

Councilor Rogers feels that an investigation was started due to a personnel issue. Mayor Kim Holaway said that DPS is a statewide, unbiased agency and one of their goals is to provide free investigations to other government entities at their request. At no point was DPS contacted to do a criminal investigation. They were called to look into a report that drums were buried in the Public Works yard. They talked to the informant and determined to follow through with the investigation. They are the ones that determine if it was criminal or not. Mayor Holaway stated that her responsibility and intentions were to insure the safety and welfare of the citizens. DPS determined if they were going to do the investigation or not.

Councilor Smith stated that from the beginning he was told it was a criminal investigation.

Mayor Kim Holaway said DPS determined that, she just asked DPS to see if there was anything there. Digging was done in sections in rows and the ADEQ person said to her to go ahead with a subsurface scan to be 100% sure there was nothing there. The digging was an effort to save money. Then the decision was made to perform the scan as it was recommended by ADEQ. Mayor Holaway stated that these decisions were not made in isolation as she had consulted with Vice-Mayor Nelson, DPS, ADEQ, Interim Public Work Director Steve Christensen, and consulted with the consulting firm Western Technologies, Inc. Nobody on the council requested a council meeting, and she felt she had the authority to move forward.

Councilor Rogers thought that the Council would be brought back into the loop.

Mayor Holaway said the only request was to inform Council of what was found after the digging and that was done.

Councilor said if the Town hadn't self-reported and the informant or informants came forward and reported this to DPS, the Town could have been fined extensively. Since the Town self reported the Town was able to be somewhat in control of the digging process.

Councilor Gary Finch was happy nothing was found. If the informant was so reputable and they were so specific where those drums were buried why wasn't the investigation dropped when nothing was found. DPS had a map with an "X" on it and DPS asked someone from the Town to go out there and show them the spot in the yard where the drums were buried and nothing was found. It should have been dropped at that point. There is nothing that the Town deals with on a regular basis that is more hazardous than anti-freeze and oil. It would take years to build up 20 drums of anti-freeze and the Town uses old oil to heat the buildings shop.

Councilor Tim Rasmussen said that the first three hours of digging was not in the specified area because ADEQ or Western Technologies, Inc. was ensuring that there was no leaching of substances into the soil.

Mayor Kim Holaway turned the meeting over to the public comment. The public that spoke were: John Phelps, Gary Cressy, Jack McCall, Cliff Browning, Denise Gilliam, Julie Browning, Leland Crowther, Tasha Browning, Tonya Gleeve, Daniel Nicoll, Eric Hamblin, and Shawn Pena. Below are the public speakers concerns:

- Why didn't the Town investigate the information and find the drums before accusing somebody. How did DPS get the employee names? How did the names get on the radio and in the paper? Who gave out these names? You say there are no names, but the names were put out. Mayor Holaway said it was part of the DPS interview with the informant. Councilor Tim Rasmussen stated never were their names mentioned by the Council / Mayor standpoint. This is not a personnel issue.
- When the investigation was asked for from DPS, that was a free investigation. They came and a DPS investigator talked to the informant and DPS decided that this was a criminal matter and the Town pursued it. So personnel were targeted then.
- Concern is if something is out there that can contaminate the ground water and the Council or Town doesn't take appropriate action they could be sued. Council did what was appropriate. In this day there are laws that don't leave much choice in how these situations are handled. Councilor Rogers said if there is hazardous waste, the Council has the responsibility to protect the citizens and the environment, but her concern is the way it continued to go on after nothing was found and how this was handled.
- There are protocols; first thing is the Town does have an attorney. The Town and DPS should have pursued the investigation with the attorney having full knowledge. ADEQ is the first place to go for this type of report, not a criminal investigator. This type of mistrust of employees has been ongoing the last few years. ADEQ would come out and do their inspections and if there was something in the ground then it would have showed up. Mayor Holaway said that the Town did go to ADEQ and was told if they do the investigation it would cost the Town \$30,000 to \$40,000.

That is why the Town reported the incident to DPS. The digging only covered 20% of the property. Councilor Rasmussen said there was never a mention of 20 barrels that is the misconception by rumors. Mayor Holaway said the number of barrels was never known just 10 to 20. Councilor Rogers said Western Technologies, Inc. took soil samples during the dig and they said it was clean, no contaminations. Mayor Kim Holaway reported that Western Technologies, Inc. said if you want to be 99.9% sure to assure the public then you need to do the subsurface survey.

- The Council should make decision not just two or three of the council members. The Council is diverse group of people and as a group the Council should have come together and decided what to do with the investigation.
- DPS investigators had a map and the Town should have punched a hole and took soil samples. For about 25 years the public works yard has had test sites that were checked even before this property was sold to the Town of Eagar.
- The informant was to be a credible person, Bill Greenwood has been here for a lot of years, is he not credible enough to be questioned and believed if accusations are denied.
- Who made the decision that the informant was credible? He should have known the amount of barrels whether it was 5 barrels or 10 barrels. Who made the decision of credibility? If this informant was so credible why did he wait eight years to bring the accusations forward?
- Mayor Holaway was quoted as saying in the paper that Apache County is the poorest county in the state of Arizona and our rural communities are poor, then what is the Town doing spending money by moving those cinders with Town equipment and manpower, that's not chump change. The digging was done and the DPS was satisfied and the Mayor made them dig more.
- After money was spent on digging the Town spent more on the scan, did the Council vote on that as a whole? Who is accountable for the cost of men and equipment and this subsurface scan? The citizens voted in all the Council so all council members would have a say in these types of decisions. Town Attorney Doug Brown stated that in executive session no votes are taken or decisions are made on anything.
- Employee's names were published in the newspaper and they have been drug through the dirt even though they have been proven innocent. Is there going to be a public apology? Councilor James Nelson said this was never intended to be a witch-hunt, Council was told there were drums of hazardous material in the ground at Public Works. We needed to find out what was there. We contacted an agency to do that. They interviewed people that the informant said were involved or knowledgeable about it. We dug without the subsurface scan first. The intent was to mitigate a potential environmental issue. Did we do some things wrong, yes we did we don't do this every day. Apologized for any feelings that were hurt or people that were hurt.
- The informant was supposedly a credible individual, he isn't he lied. Why is the Council protecting this person? Only two people who were named. Why does somebody hate one individual so much? "My husband is a good hardworking man and all we want is to do be left alone and do his job and make his paycheck that is 10% less than before this. My husband is credible, did you consider who was most credible, and did you think this other person was more credible?"

Thanked Councilor Rogers for going against the grain. Told Council that they have no clue and hope they never have to experience what the family has been through the last six months.

- Families have been hurt over this. You say this wasn't a criminal investigation but two people were read their Miranda Rights that makes it a criminal investigation.
- Question directed to Town Attorney Doug Brown: Is there not an amendment or law when you are falsely accused to know your accuser? Mr. Brown said if a case went to trial, yes a person would have to know your accuser but since the case did not go to trial DPS would have a public record, they don't have to disclose it while the investigation is going on. It is officially closed at this point, the DPS investigation would be a public record and a public record request would have to disclose that. Mr. Brown said he would assume somewhere in the document DPS names the informant and public is entitled to get those documents under the federal law.
- We do care about our community and our environment. The reason we find this personal is because of several allegations that turned out false. Mr. Browning was relieved of his duties several months ago because of allegations that never panned out and he didn't lose his job so other allegations were brought up. They continued elsewhere. It needs to stop. It has cost a job and it is hard on families.

Town Attorney Doug Brown said he was also the Town Prosecutor, prosecuting misdemeanors in the Town of Eagar. Would like to address Vice-Mayor James Nelson's point that this matter should be closed. DPS does a criminal law investigation, that's what they do. When they say they have a credible person and there is no evidence, he finds it hard find a person credible when there is no evidence to back it up. They have cost the Town time and money. Chief Mike Hogan should investigate this. Need all the facts as a town to bring charges against this person. Vice-Mayor Nelson told Mr. Brown to proceed however he would in a similar case. Mr. Brown said Chief Hogan could go to an outside agency for help with an investigation against the false allegations. There is no reason why the town wouldn't have the police investigate this.

**C. DISCUSSION AND CONSIDERATION TO APPROVE THE LOWEST RESPONSIBLE BID FOR MATERIAL NEEDED ON THE LESUEUR DRAINAGE GRANT PROJECT**

Steve Christensen, Interim Public Works Director, recommended the Council approve the low bid listed, which was Canyon Pipe and Supply in Show Low.

Vice-Mayor James Nelson, Jr. moved to approve the lowest responsible bid for material needed on the LeSueur Drainage Grant Project to Canyon Pipe & Supply. Councilor Steve Erhart seconded; all were in favor, motion carried unanimously. 7-0

**D. DISCUSSION AND CONSIDERATION TO ENTER INTO A POLLING PLACE AGREEMENT WITH APACHE COUNTY FOR USE OF THE EAGAR COUNCIL CHAMBERS AS AN OFFICIAL ELECTION POLLING SITE**



Town Clerk Eva Wilson said this was a housekeeping item between Apache County Election Department and the Town of Eagar for the use of the Eagar Council Chambers as an official polling site for elections.

Councilor Gary Finch moved to enter into a Polling Place Agreement with Apache County for use of the Eagar Council Chambers, as an official election-polling site. Councilor Debbie Rogers seconded; all were in favor, motion carried unanimously. 7-0

**E. DISCUSSION AND CONSIDERATION TO HOLD ALL MAIL ELECTION IN 2012**

Apache County Elections Director Angela Romero, County Recorder LeNora Fulton, and Voter Registration Supervisor Geneva Honea- presented the steps for an all mail ballot. Election. Below are answers to Council's questions:

- All mail ballots increases the voter participation by 20% to 30%.
- Voters can go to an election center to do drop off their ballots. Election centers are Eagar Town Hall, Apache County Annex, and Apache County site in St. Johns.
- If voters lost or spoiled a ballot voters can go to St. Johns, Apache County Annex, or Eagar Town Hall to receive a new ballot.
- Secrecy of the ballot is ensured by the Recorder's office, and no ballot is opened until ready to be placed in the voting machine.
- There are already 888 people signed up for the early voting in Eagar. There has been an increase of early voters because Apache County Elections Department sent out a mass mailing in May.
- It is convenient – voters can vote in their own home and don't need to present identification.
- Returns have to be in Eagar, Springerville or St. Johns election centers by 7:00 p.m. on Election Day.
- If a provisional ballot is cast you can guarantee that a person is a registered voter by their drivers license number, birth certificate, or tribal I.D.
- Post Office does not forward a ballot.
- Total estimate of one election is \$8,000.

Town Clerk Eva Wilson informed the council that a little over \$10,000 was budgeted for elections this fiscal year. Ms Wilson had reviewed the elections budget with Angela Romero as there were going to be increased fees for Apache County and they had determined that only one polling site was going to be used before the proposal for an all mail election. She advised the Council that an all mail election could cost at least \$8,000 more than she had budgeted for the 2012 election, if a General Election was also needed.

Councilor Steve Erhart moved to hold an all mail election in 2012. Councilor Byron Smith seconded; four Councilors were in favor of the motion, Councilors Tim Rasmussen, Debbie Rogers, and Gary Finch were against the motion, motion carried. 4-3

F. DISCUSSION OF APACHE COUNTY REDISTRICTING

Councilor Steve Erhart confirmed with Apache County Elections that the Apache County Supervisors had already approved the county redistricting in July.

G. DISCUSSION AND CONSIDERATION APPROVING FOR THE TOWN OF EAGAR TO APPLY FOR A SAFE ROUTES TO SCHOOL INFRASTRUCTURE GRANT

Mayor Kim Holaway reported that she had applied for this grant last year and it was not funded and that the Town missed receiving the grant by three points. She would like to apply again this year.

Vice-Mayor James Nelson moved to approve the Town of Eagar to apply for a Safe Routes to School Infrastructure Grant. Councilor Debbie Rogers seconded; all were in favor, motion carried unanimously. 7-0

H. DISCUSSION AND CONSIDERATION TO APPROVE A PROCLAMATION DECLARING OCTOBER 2011 WALK TO SCHOOL MONTH

Mayor Holaway presented the proclamation.

Vice-Mayor James Nelson moved to approve a Proclamation declaring October 2011 Walk to School Month. Councilor Steve Erhart seconded; all were in favor, motion carried unanimously. 7-0

I. DISCUSSION AND CONSIDERATION TO APPROVE A PROCLAMATION DECLARING OCTOBER 5, 2011 WALK TO SCHOOL DAY

Mayor Holaway presented the proclamation.

Vice-Mayor James Nelson moved to approve a Proclamation declaring October 5, 2011 Walk to School Day. Councilor Debbie Rogers seconded; all were in favor, motion carried unanimously. 7-0

**ITEM #9: EXECUTIVE SESSION**

Council determined there was no reason to go into executive session.

**ITEM #10: SIGNING OF DOCUMENTS**

Polling Site Agreement was signed.

# ITEM #11: ADJOURNMENT

Councilor Gary Finch moved to adjourn the meeting 9:30 p.m. Councilor Debbie Rogers seconded; all were in favor, motion carried unanimously. 7-0

Attest: \_\_\_\_\_

Mayor: \_\_\_\_\_

Vice-Mayor: \_\_\_\_\_

Council: \_\_\_\_\_

\_\_\_\_\_  
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## CERTIFICATION OF COUNCIL MINUTES

I hereby certify that the foregoing minutes are true and correct copy of the minutes of the regular session of the Town of Eagar, Arizona held on September 20, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

\_\_\_\_\_  
Eva M. Wilson, Town Clerk